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Robery Bradley, Joyce Bradley, R. Dale Whitlock, Louis Peterson, and Barbara Peterson v. Payson City Corporation : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

ROBERT BRADLEY, JOYCE BRADLEY, R. DALE WHITLOCK, LOUIS PETERSON, and BARBARA PETERSON, Plaintiffs/Appellees, vs. PAYSON CITY CORPORATION Defendant/Appellant.	**BRIEF OF APPELLANT PAYSON CITY** Case No. 990329-CA Argument Priority 15

APPEAL FROM A DECISION OF THE
FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY
HONORABLE RAY M. HARDING, SR., DISTRICT JUDGE

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STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction over this matter pursuant to Utah Code Ann. § 78-2a-3(2)(j) granting jurisdiction over cases transferred by the Supreme Court.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

1. Whether the trial court committed reversable error by improperly substituting its judgment for that of the City Council and thereby failing to grant the statutory presumption of validity and judicial deference to which the City is entitled in the exercise of its legislative discretion?

Standard: A trial court's grant of summary judgment is reviewed for correctness with no deference to the trial court's conclusions of law. Certified Surety Group, Ltd. v. UT Inc., 960 P.2d 904, 905-06 (Utah 1998). Preserved: (R. 75-77, 250-51).

2. Did the trial court commit reversible error by improperly applying the "arbitrary and capricious" standard of review which is applicable to quasi-judicial or administrative land use decisions as opposed to the more deferential standard applicable to this quintessential exercise of legislative discretion by the City Council in furtherance of its zoning powers?[1]

Standard: Same as No. 1 above. Preserved: (R. 75-77, 250-51).

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[1] We note that the issue of what is the appropriate standard for judicial review of a municipality's legislative land use decisions, posing nearly identical legal questions, is presented in an appeal pending before this Court in Harmon City, Inc. v. Draper City, Case No. 981628-CA. As a result, much of this brief mirrors arguments made in briefing the Harmon City appeal.

3. Did the trial court err by improperly presuming that the City acted in response to "public clamor" in denying the plaintiffs' application for rezoning?

Standard: Same as No. 1 above. Preserved: (R. 245-47).

PROVISIONS OF CONSTITUTION, STATUTES, ORDINANCES AND RULES

A municipality's land use decisions in the exercise of legislative discretion are entitled to a statutory presumption of validity which limits the scope of a trial court's review of those decisions.

> (1) No person may challenge in district court a municipality's land use decisions made under this chapter or under the regulation made under authority of this chapter until that person has exhausted his administrative remedies.
> (2) Any person adversely affected by any decision made in the exercise of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local decision is rendered.
> (3) The courts shall:
> (a) presume that land use decisions and regulations are valid; and
> (b) determine only whether or not the decision is arbitrary, capricious, or illegal.

Utah Code Ann. § 10-9-1001.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is a land use case arising from the decision of the Payson City Council in the exercise of its legislative discretion to deny two applications for rezoning of the Appellees' (collectively "Bradleys") property (the "Property") from residential agricultural to high density residential use. The Property was zoned for the most part R-1-A which is a low density residential agricultural zoning with minimum lot size of one acre. One portion of

the property was zoned I-1 industrial. In January of 1996, Bradleys applied to the City to have their property rezoned to R-2-75, a higher density multi-family zoning designation. The City's Planning Commission voted to recommend denial of the rezoning and the City Council subsequently denied the application.

In March of 1996, Bradleys made another application for rezoning seeking to have the Property zoned R-1-9, a higher density single family zoning, which effectively superceded the earlier application. After a public hearing on the second application, the City Council voted to deny that second rezoning request.

B. COURSE OF PROCEEDINGS

Bradleys then initiated this lawsuit claiming that the City's denial of their rezoning request was arbitrary and capricious and that it constituted a taking of their property without compensation. On March 21, 1998, the City filed a motion for summary judgment arguing that, based upon the legislative record, the City had acted appropriately within its legislative discretion in evaluating and denying the rezoning request. Bradleys subsequently filed a cross-motion for summary judgment and opposed the City's motion, claiming that the decision by the City was arbitrary and capricious.

By Memorandum Decision filed on January 22, 1999, the trial court ruled that the City Council's decision was arbitrary and capricious. It based its ruling on a finding that the reasons for the City's decision were (1) without sufficient factual basis and (2) based on citizen opposition. The court also indicated that it had reviewed the zoning maps and, substituting its judgment for the legislative discretion of the City Council, reached the

conclusion that there was no reason not to approve the rezoning. Ignoring the fact that the second application which triggered this legal challenge requested rezoning to the R-1-9 designation, the trial court ordered that "the zone change from R-1-A to R-2-75 is hereby approved." The court's Order granting summary judgment was entered on March 16, 1999.

C. STATEMENT OF FACTS

1. The Property at issue lies within an area zoned R-1-A, low density agricultural residential with one acre minimum lot size, or I-1 industrial. (R. 70-71.)

2. The R-1-A zone is abutted on four sides by property zoned for industrial use. (R. 42-43.)

3. The 1995 Payson City General Plan encourages residential areas to be located east of the I-15 buffer and establishes as a long-term goal and policy the enactment of zoning ordinances utilizing the natural buffer of I-15 and providing for the I-1 industrial zoning designation in areas west of I-15. The General Plan further encourages the concentration of I-1 industrial zoning in the natural commercial corridor between the Union Pacific and D&RW rail lines and Interstate exists #254 and #252. (R. 50, 52.)

4. In January of 1996, David S. White applied to Payson City for rezoning of property owned by Dale H. Tanner, Lewis J. Peterson and R. Dale Whitelock from R-1-A zoning to R-2-75, a high density multifamily residential zoning (the "White rezoning"). (R. 177-78.)

5. In a report to the Planning Commission, the planning staff recommended that the Commission recommend to the City Council approval of the White rezoning. (R. 173.)

6. The request came before the Planning Commission on February 6, 1996. At that time, Mr. White indicated his desire that the area involved be rezoned to provide rental housing within the City. Mr. Whitelock, one of the property owners represented by Mr. White, indicated that the area was no longer suitable for him to raise bobcats, so he had to relocate and was in favor of the rezoning. Commissioner Tuttle expressed the concern that many who had moved into the area had done so to have one acre lots. Chairman Stewart expressed concern that the general plan anticipated industrial development in the surrounding areas. The Commission voted to recommend scheduling of a public hearing for the request. (R. 62-3, 166-67.)

7. The public hearing on the rezoning request was held March 20, 1996, before the Planning Commission. The Commission received a petition signed by 38 property owners in the area affected by the rezoning request opposing the White rezoning and stating a preference that the area remain zoned R-1-A. (R. 159-60) Although the majority of public comments opposed the White rezoning, either for preference for animal property, interest in maintaining the character of the area, or concerns over infrastructure, several comments were in favor of the rezoning. After the public discussion, the Commission recommended that the City Council deny the request to rezone the Property from R-1-A to R-2-75. (R. 59-60, 153-55.)

8. On March 20, 1996, in a City Council meeting following the Planning Commission meeting, a public hearing was held on the White rezoning application. In addition to public comments about retaining the current zoning for raising animals and preserving the nature of the neighborhood, other comments raised concerns about traffic levels in the area. There appeared to be sympathy with the need for low income housing, but the consensus on the Council appeared to be that this was not the right area for it. The Council voted to deny the White rezoning based upon the general plan, traffic concerns, and the Planning Commission recommendation. (R. 64-65).

9. Prior to the City's denial of the White rezoning request, Louis J. Peterson filed a request to have the area encompassing his property and others rezoned from R-1-A to R-1-9 (the "Peterson rezoning") on March 8, 1996.[2] The reason given was "[t]he size of the lots are too large for the familys [sic] to handle." (R. 145.)

10. The Planning Staff recommended to the Planning Commission that the Peterson rezoning be approved. (R. 140.)

11. On April 11, 1996, the Planning Commission first considered the Peterson rezoning. The Commission noted that the Gordon Taylor property was not properly included in the request because it was outside the City limits and no annexation request for the property had been received. It also noted that an additional property would be affected, the "Toleman property which is currently Industrial would become Residential." The

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[2] In their summary judgment memorandum, Bradleys stated that the application was also on behalf of R. Dale Whitelock, Robert Bradley, Gordon Taylor and Pete Schmidt to have their properties rezoned. The application does not indicate the names of these individuals, but the area to be rezoned includes property owned by them.

Commission voted to recommend approval of the Peterson rezoning and set it for public hearing subject to removal of the Gordon Taylor property from the request. (R. 122-23.)

12. The Peterson rezoning came before the City Council for public hearing on May 22, 1996. Among the public comments were comments by representatives of businesses in the abutting industrial area including Associated Foods, indicating its concern that truck noise will cause residents to seek action against it, and Muir Roberts, worrying about whether residents would tolerate the noise and smell of its packing facilities. After closing the public hearing, the Council voted to deny the Peterson rezoning request. (R. 307-310.)

13. Bradleys commenced this action by Verified Complaint dated March 26, 1997, and filed April 1, 1997. (R. 1-16.)

14. Pursuant to cross-motions for summary judgment by the parties, the trial court entered a Memorandum Decision on January 22, 1999. (R. 341-43, copy enclosed at Addendum A-1.)

15. The summary judgment Order was entered on March 16, 1999 (R. 344-345, copy enclosed as Addendum A-2) and the City's notice of appeal was filed on April 5, 1999. (R. 350-351.)

SUMMARY OF ARGUMENT

This appeal illustrates the confusion that exists with respect to the appropriate standard of judicial review of a municipality's legislative land use decisions vis-a-vis quasi-judicial or administrative land use decisions. The difference is significant and implicates the

constitutional separation of powers doctrine as well as long-standing and well-established legal precedent granting substantial judicial deference to the exercise of legislative discretion by local decision makers.

In this matter, the trial court incorrectly applied the wrong standard by failing to grant the City's decision the presumption of validity and broad judicial deference to which it was entitled, and by making an independent decision substituting its judgment for that of the Payson City Council, the legislative body charged with the responsibility of making public policy choices, such as those posed by requests for zoning amendments. The denial of Bradleys' rezoning requests was supported by the record as not being in harmony with the Payson City General Plan and was therefore not arbitrary, capricious or illegal under Utah Code Ann. § 10-9-1001.

This Court should prevent such an unwarranted interference with the political/ legislative process by the judiciary. This case presents an opportunity to clarify and reaffirm the appropriate standard of judicial review for such legislative decisions.

ARGUMENT

I. THERE IS AN IMPORTANT AND SIGNIFICANT DISTINCTION BETWEEN THE APPROPRIATE STANDARD FOR JUDICIAL REVIEW OF LEGISLATIVE DECISIONS AS OPPOSED TO ADMINISTRATIVE ACTIONS OF A MUNICIPALITY UNDER THE "ARBITRARY OR CAPRICIOUS" LANGUAGE OF UTAH CODE ANN. § 10-9-1001.

A. THE PAYSON CITY COUNCIL WAS CLEARLY ACTING IN A LEGISLATIVE CAPACITY IN DENYING PLAINTIFFS' REQUEST FOR REZONING.

In addressing the issues presented here, it is important to recognize and keep in mind that the enactment and amendment of zoning ordinances is fundamentally a legislative act. Sandy City v. Salt Lake County, 827 P.2d 212, 221 (Utah 1992). *See also* Scherbel v. Salt Lake City Corp., 758 P.2d 897, 899 (Utah 1988) ("the passage of general zoning ordinances and the determination of zoning policy [are] properly vested in the legislative branch."); Gayland v. Salt Lake County, 358 P.2d 633, 635-36 (Utah 1961) (zoning is a legislative function carrying with it wide discretion). *See also* Smith Inv. Co. v. Sandy City, 958 P.2d 245, 25 n. 6 (Utah App. 1998) ("the Supreme Court of Utah termed rezonings 'administrative' for purposes of holding them to be unfit subjects for referendum. For all other purposes, however, rezonings in Utah are characterized as legislative.") The Payson City Council was clearly acting in a legislative capacity when it reviewed and acted upon Bradleys' rezoning applications.

It is also important to understand that the legislative process is inherently political in nature and requires a legislative body to broadly weigh the interests of all concerned in furtherance of the general welfare. Jenkins v. Swan, 675 P.2d 1145, 1156 (Utah 1983)

("broad matters of a political nature are best determined in the legislative branch of government"). The legislative acts of zoning and planning affect the broad interests of all citizens in a municipality and have traditionally been granted substantial judicial deference based upon their subjective nature and the constitutional separation of powers doctrine.

B. AN ADMINISTRATIVE STANDARD OF REVIEW IS INCONSISTENT WITH THE BROAD JUDICIAL DEFERENCE AND PRESUMPTION OF VALIDITY AFFORDED TO A MUNICIPALITY'S LEGISLATIVE DECISIONS.

Legislative decisions of municipalities in the exercise of their zoning and police powers are reviewed by courts with considerable deference. Springville Citizens for a Better Community v. City of Springville, 979 P.2d 332, 336 (Utah 1999) ("A municipality's land use decisions are entitled to a great deal of deference."); 1 Ziegler, Rathkopf's the Law of Zoning and Planning (4 ed. 1989, supp 1998) § 3.04[1] at 3-23 (cited herein as "Rathkopf's"). The burden of overcoming this deference and presumption of validity lies with the plaintiff who is making the challenge to the validity of the decision. Rathkopf's § 3.04[1] at 3-23. *See also* Call v. City of West Jordan, 614 P.2d 1257, 1258 (Utah 1980) (ordinance passed within the scope of legislatively granted power is accorded a presumption of constitutional validity); Naylor v. Salt Lake City Corp., 398 P.2d 27, 29 (Utah 1965) ("[W]e are more than cognizant of the proposition that the governing body of a city is endowed with considerable latitude in determining the proper uses of property within its confines.") The Utah Supreme Court has traditionally granted municipalities' considerable discretion in their exercise of the legislative power to zone.

> In the review of zoning cases the function of the court is narrow and its scope is limited to a determination of whether or not the action of the Board of County Commissioners as a legislative body is illegal, arbitrary, discriminatory or capricious. No contention is made that the county did not act within its grant of powers from the legislature in its adoption of the original zoning ordinance. The prior decisions of this court without exception have laid down the rule that the exercise of the zoning power is a legislative function to be exercised by the legislative bodies of the municipalities. The wisdom of the zoning plan, its necessity, the nature and boundaries of the district to be zoned are matters which lie solely within that discretion. It is the policy of this court as enunciated in its prior decisions that it will avoid substituting its judgment for that of the legislative body of the municipality.

Crestview-Holladay Homeowners Ass'n, Inc. v. Engh Floral Co., 545 P.2d 1150, 1151-52 (Utah 1976) (emphasis added).

The burden a plaintiff must bear in overcoming the presumption of validity is substantial.

> While the most common statement of the degree of proof required to overcome the presumption of validity is that the issue must be removed from the area of reasonable debate, the courts have used a variety of language to describe what all agree is an extraordinary burden. A number of courts require that the litigant asserting invalidity prove by "clear and convincing" evidence that the ordinance is unreasonable, arbitrary, or otherwise invalid. Some courts require "clear and affirmative" evidence of invalidity, and others simply require that the invalidity be "clearly" shown or conclusively demonstrated.

1 Young, Anderson's American Law of Zoning (4 ed. 1996) § 3.21 at 136-37 (referred to herein as "Anderson").

Where a presumption of validity has been given to zoning decisions, but the evidence in support of a decision is fairly debatable, the court may not substitute its judgment for that of the body making the zoning decision. Smith Investment Co. v. Sandy

City, 958 P.2d 245, 253 (Utah App. 1998); 3 Ziegler § 42.07[2] at 42-54,55. This is clearly the position of Utah courts as apparent from this Court's recent review of the well-reasoned line of authority cautioning against unwarranted judicial intrusion into municipal legislative functions. Smith Investment at 252-53. *See also* Chevron Oil Co. v. Beaver County, 449 P.2d 989, 990 (Utah 1969) ("Whether we agree with the wisdom of the county commissioners or do not agree with it is of no importance. The matter is to be decided by a legislative body . . . and the courts do not ordinarily interfere in such matters."); Gayland at 636 (the fact that the evidence could have led to a contrary decision does not lead to the conclusion that the decision which was made is not supported by the evidence); Cottonwood Heights Citizens Ass'n v. Bd. of County Comm'rs, 593 P.2d 138, 140 (Utah 1979) (courts should not interfere with land use decisions "unless it is shown that there is no reasonable basis to justify the action taken."); Smith Investment at 952-53 (selection of one of alternative methods of solving a problem is entirely within city's discretion).

Applying the appropriate standard of review in this case would require that Bradleys affirmatively overcome the presumption of validity afforded the City's denial of their rezoning applications. It is not sufficient that they simply disagree with the outcome or can point to indicia that the decision could have gone either way. They must clearly demonstrate that the evidence leads only to the conclusion that the City's actions were arbitrary, capricious or illegal. As noted in Gayland, *supra*, if there is another possible reasonable outcome, the Court must defer to the City's legislative discretion. Bradleys did

not satisfy this burden. The legislative record, including references in the General Plan anticipating industrial zoning for this area of the City, supports the action of the City Council and demonstrates that their decisions were not arbitrary, capricious or illegal. The trial court therefore improperly interfered with the City's legislative discretion and its decision should be reversed.

C. THE ARBITRARY AND CAPRICIOUS STANDARD HAS A DIFFERENT MEANING WHEN APPLIED TO LEGISLATIVE DECISIONS.

There appears to be some confusion among trial judges and practitioners as to whether the standard of review set forth in Utah Code Ann. § 10-9-1001 for determining whether the actions of municipality are arbitrary, capricious or illegal applies to all municipal land use decisions regardless of whether the nature of decision at issue is categorized as "legislative," "administrative" or "quasi-judicial."[3] Utah courts have long recognized a clear and meaningful distinction, both statutory and judicial, between the discretion afforded to administrative or quasi-judicial decisions of local governmental entities as opposed to legislative actions, in recognition of the constitutional separation of powers doctrine.

There is no real conflict between the "reasonably debatable" standard of review for legislative decisions articulated by this Court in the Smith Investment opinion when analyzed in the context of the arbitrary and capricious language of Utah Code Ann.

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[3] Even the City in its opening memorandum prepared prior to this Court's Smith Investment decision focused on the "substantial evidence" standard. In later memoranda and at oral argument, the City focused on the "fairly debatable" or "reasonably debatable" standard enunciated by this Court in Smith Investment.

§ 10-9-1001. In point of fact, those positions are easily reconciled by a recognition of the fundamental distinction between the character of administrative or quasi-judicial decisions as opposed to legislative actions.

It is apparent from its Memorandum Decision (R. 341-343) that the trial court improperly relied on the "substantial evidence" standard to determine whether the decisions to deny Bradleys' rezoning requests were arbitrary or capricious. That standard, however, comes from case law which addresses administrative land use decisions and does not apply to fundamentally legislative decisions. Brown v. Sandy City Bd. of Adjustment, 957 P.2d 207 (Utah App. 1998) (city's administrative interpretation of its zoning ordinances); Wells v. Bd. of Adjustment of Salt Lake City Corp., 936 P.2d 1102 (Utah App. 1997)(board of adjustment decision denying variance); Xanthos v. Bd. of Adjustment of Salt Lake City, 685 P.2d 1032 (Utah 1984) (same); Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602 (Utah App. 1995) (review of trial court's finding of arbitrary and capricious action by county in approving special exception to zoning ordinance); Davis County v. Clearfield City, 756 P.2d 704 (Utah App. 1988) (denial of conditional use permit); First Nat'l Bank of Boston v. County Bd. of Equalization of Salt Lake County, 799 P.2d 1163 (Utah 1990) (administrative evaluation of property for tax purposes); Chambers v. Smithfield City, 714 P.2d 1133 (Utah 1986) (administrative procedures for processing variance requests).

The bulk of these cases address decisions of boards of adjustment. The distinction between the quasi-judicial decisions of a board of adjustment as opposed to legislative municipal zoning decisions is significant. To begin with, boards of adjustment have no

legislative authority and are not permitted to exercise those powers. *E.g.*, Salt Lake County Cottonwood Sanitary Dist. v. Sandy City, 879 P.2d 1379, 1383 (Utah App. 1994) (improper to delegate legislative function to board); Sandy City v. Salt Lake County, 827 P.2d 212, 220 (Utah 1992) ("Boards of adjustment can tailor a zoning or rezoning ordinance to specific, unforeseen circumstances, but they lack the authority to determine zoning classifications of their own accord.") *See also* 5 Young, Anderson's American Law of Zoning (4 ed. 1996) § 21.04 at 699 (referred to herein as "Anderson") ("[A] board of adjustment is an administrative body which may be authorized to exercise quasi-judicial powers. . . It is a body without legislative authority.")

The Utah Legislature has also provided separate statutory provisions for appeals from board of adjustment decisions, Utah Code Ann. § 10-9-708, as distinguishable from a city's land use decisions, § 10-9-1001. If the nature of the judicial review were the same in both instances, these separate provisions would be redundant. Neither constitutional principles nor the rules of statutory construction support such a conclusion.

There is no question that Utah law applies the "substantial evidence" measure to the arbitrary and capricious evaluation of administrative decisions. There is, however, no Utah case law which would support application of that standard to a legislative decision by the governing body of a municipality.

In Walker v. Brigham City, 856 P.2d 347 (Utah 1993) the Supreme Court applied a "wholly discordant to reason and justice" measure to the arbitrary and capricious standard applied to a legislative decision. Walker at 349 (citations omitted). In Crestview-Holladay

Homeowners Ass'n v. Engh Floral Co., 545 P.2d 1150 (Utah 1976), the Supreme Court, reviewing a challenge to a rezoning by the Salt Lake County Commission, observed that "[i]n the review of zoning cases the function of the court is narrow and its scope is limited to a determination of whether or not the action of the Board of County Commissioners as a legislative body is illegal, arbitrary, discriminatory or capricious." Id. at 1151-52. The court deferred to the legislative body and found the zoning not to be arbitrary and capricious, upholding it as enacted "pursuant to a planning scheme developed for that portion of the county." Id. at 1152. Likewise, in Naylor v. Salt Lake City Corp., 410 P.2d 764 (Utah 1966), the Supreme Court upheld a rezoning by a city's legislative body. The standard it applied in determining whether the action was arbitrary and capricious was whether "there is no reasonable basis whatsoever to justify it and its action must therefore be regarded as capricious and arbitrary." Naylor 410 P.2d at 766.

This Court has recently upheld a city's decision to downzone property, applying a "reasonably debatable" standard with deference to the legislative decision maker. Smith Investment at 253. Consistent with Utah case law deferring to legislative decision makers, the Washington Supreme Court has defined the arbitrary and capricious standard applicable to legislative decisions.

> An action is arbitrary or capricious when the legislative body reaches its decision "willfully and unreasonably, without consideration and in disregard of facts or circumstances." A decision reached after due consideration on a matter upon which there is room for differing opinions is not arbitrary or capricious. This is so, even though a reviewing court may believe the decision is erroneous.

Sparks v. Douglas County, 904 P.2d 738, 742 (Wash. 1995) (citations omitted). Where the City has clearly deliberated over alternatives and given careful consideration to differing positions, it has not, as a matter of law, acted arbitrarily or capriciously Springville Citizens at 337.

II. THE TRIAL COURT APPLIED THE INCORRECT STANDARD OF REVIEW, FAILED TO GRANT THE CITY'S DECISIONS THE REQUISITE PRESUMPTION OF VALIDITY OR JUDICIAL DEFERENCE AND IMPROPERLY SUBSTITUTED ITS JUDGMENT FOR THAT OF THE CITY COUNCIL.

The errors committed by the trial court are apparent from both Judge Harding's introductory comments at the start of the hearing on the parties' cross-motions for summary judgment on January 15, 1999, and from a cursory review of its Memorandum Decision. To begin with, Judge Harding incorrectly viewed himself as conducting a plenary review which would allow him to make an independent decision based on the facts set forth in the legislative record (R. 446, p. 3).[4] It is also obvious that the Court relied on the wrong standard of review for the City's legislative zoning decision.

> The Court may reverse the City Council's denial of the zone change if the "action taken was so unreasonable as to be arbitrary and capricious." Xanthos v. Bd. of Adjustment, 685 P.2d 1032, 1034 (Utah 1984). "Even if the reasons given in the motion adopted by the council might otherwise be legally sufficient, . . . the denial of a permit is arbitrary when the reasons are without sufficient factual basis. . . . Citizen opposition is a consideration which must be weighed, but cannot be the sole basis for the decision to deny." Davis County v. Clearfield City, 756 P.2d 704, 711 (Utah Ct. App. 1988). The Court believes that the standard set forth in Davis County, although that case

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[4] See the Notice by the court reporter that replacement transcripts were filed correcting various errors. The trial court record references the original transcript of the hearing of January 15, 1999, as being p. 446.

> involved a denial of an application for a conditional use permit instead of a zone change, involves the same legal analysis as this case.

Memorandum Decision p. 2, R. 342. The trial court incorrectly applied the quasi-judicial standard of Xanthos and the administrative standard of Davis County to the City's legislative zoning decisions. There is no indication that the court even considered the statutory and common law presumptions of validity to which the City's legislative decisions were entitled. Noting that the reasons for the City's decisions "might normally be legally sufficient," the court concluded that those decisions were "without sufficient factual basis." (R. 342.)

It appears from the Memorandum Decision that the trial court not only improperly made an independent evaluation of the issues by weighing and considering the arguments made before the City Council for and against the application to rezone Bradley's property, but also erroneously imposed upon the City the burden of demonstrating an adequate factual basis in support of its decision in the record. The trial court did not require the Bradleys to overcome the presumption of validity afforded the City's decisions or to justify setting aside the judicial deference normally afforded a City's legislative actions. This redistribution of burdens is legally inappropriate.

It is equally clear that the trial court engaged in an independent review of the zoning maps without consulting the General Plan, improperly substituting its judgment for that of the City Council and disagreeing with their conclusions.

> The Court notes that from the zoning maps provided to the Court it appears that there are already residentially zoned areas on the west side

> of the I-15 buffer. The mere fact that Plaintiffs' property is on the west side does not establish that it is contrary to the general plan.

Memorandum Decision p. 3, R. 341. The trial court failed to acknowledge the references in the Payson City General Plan, which were a part of the legislative record, encouraging the adoption of an industrial zoning designation west of I-15 and concentrating such zoning in the natural commercial corridor between the Union Pacific and D&RW rail lines and between Interstate exits #254 and #252. The plan further encourages residential areas to locate east of that natural I-15 buffer (R. 50, 52). In doing so, the trial court turned its back on years of controlling case law to second guess the exercise of legislative discretion by the City Council, reversed their decision and imposed the court's own independent legislative judgment on this fundamentally political, public policy decision. This was not only a deviation from well-established judicial precedent but crossed the line separating the judiciary from the legislative branch of government.

The trial court's excursion, even if unintentional, was nonetheless improper, requiring reversal as a matter of law.

III. THE CITY'S DENIAL OF BRADLEYS' REZONING REQUEST WAS NOT ARBITRARY, CAPRICIOUS OR ILLEGAL.

A review of the legislative record in this matter, granting the City's exercise of legislative discretion the appropriate level of deference and presumption of validity, leads to the conclusion that the City's denial of Bradleys' rezoning request was not arbitrary, capricious or illegal.[5]

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[5] The trial court's ruling did not address the issue of legality. We therefore confine our discussion to whether the City's land use decisions were arbitrary or capricious.

A. THE TRIAL COURT ERRED IN CONCLUDING THAT THE CITY'S DENIAL OF BRADLEYS' REZONING REQUEST WAS BASED SOLELY ON CITIZEN OPPOSITION BECAUSE THE "PUBLIC CLAMOR" ANALYSIS IS NOT APPLICABLE TO THE LEGISLATIVE PROCESS.

Another fundamental flaw in the trial court's ruling in this case is the conclusion that the City acted improperly under the influence of "public clamor." This is another stark illustration of a failure to acknowledge the legislative context in which this decision was made, as opposed to administrative or quasi-judicial decisions. Such an analysis fails to recognize the inherently political and therefore subjective nature of the legislative decision making process. By way of illustration, any discussion of whether the proposed rezoning of a particular piece of property is "compatible" with neighboring uses is, by definition, a matter of subjective opinion. It is absurd to attempt to apply anything like a "substantial evidence" measure to that legislative process.

Utah law requires notification of proposed zoning changes and public involvement in the process of zoning enactment or amendments. Utah Code Ann. §§ 10-9-402 and 403. The rights to public notice and participation are judicially enforceable. *E.g.,* Citizen's Awareness Now v. Marakis, 873 P.2d 1117 (Utah 1994).

> In pursuing its authority to zone . . . [the zoning body] is performing a legislative function. It has the responsibility of advising itself of all pertinent facts as a basis for determining what is in the public interest in that regard. For this reason it is entirely appropriate to hold public hearings and to allow any interested parties it desires to give information and to present their ideas on the matter.

Gayland at 635-36 (footnote omitted). It is appropriate "for the council to consider objections of neighbors who would have to live with the proposed use." Heilman v. City of Roseburg, 591 P.2d 390, 394 (Or. App. 1979).

Allegations or implications that the City acted improperly under the influence of "public clamor" are therefore fundamentally flawed. Cases dealing with public clamor have dealt uniformly with administrative denials of permits.[6] Even in that context, the courts also find objection only where the record demonstrates that public clamor is the sole basis for the denial of a permit.

Consideration of citizen views is clearly appropriate in the formulation of policy decisions, including requests to rezone individual parcels of property. Given the legal requirement that the Council involve the public in its evaluation of a zoning change, it would be illogical to argue that the Council should receive public comment but not base its decision on any of the opinions expressed or input received.

One of the realities which the "public clamor" argument ignores is that elected officials are expected to protect the interests of their constituencies in making legislative policy decisions. Of necessity, this involves a balancing of the interests of all property owners, not just those of the property owner who seeks a rezoning. In order to engage in

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[6] Davis County v. Clearfield City (denial of a conditional use permit); C.R.P. Inv., Inc. v. Village of Shoreview, 304 N.W.2d 320 (Minn. 1981) (denial of a special use permit for "quad housing"); Bd. of Comm'rs v. Teton County Youth Services, Inc., 652 P.2d 400 (Wyo. 1982) (denial of permit for operation of youth services facility); City of Barnum v. County of Carlton, 386 N.W.2d 770 (Minn. App. 1986) (denial of conditional use permit); Chanhassen Estates Residence Assoc. v. Chankassen, 342 N.W.2d 335 (Minn. 1984) (denial of conditional use permit).

that balancing, all legislative bodies, not just city councils, must listen to public opinion and decide how much weight to give to the opinions expressed.

The record demonstrates that the Council appropriately considered public comment and carefully balanced the interests of the general public and Bradleys. There is no evidence that the decision "was based solely on citizen opposition." (R. 341.) In fact, there is no evidence that the public input amounted to public clamor. Considering that public input as part of the Council's legislative deliberation of the zoning request was not arbitrary, capricious or illegal.

B. THE EXISTENCE OF EVIDENCE IN THE RECORD WHICH MIGHT ALSO SUPPORT AN ALTERNATIVE CONCLUSION DOES NOT MAKE THE CITY'S DECISION ARBITRARY, CAPRICIOUS OR ILLEGAL.

It is important to keep in mind while reviewing the legislative record in this case that merely because the information presented to the council, as reflected by that record, may have also justified a reasonable alternative conclusion, that does not render the decision made by the City arbitrary, capricious or illegal or justify the trial court's substitution of its judgment for that of local legislative decision makers. Sandy City at 482; Gayland at 636.

Nor is it determinative that the Planning Commission initially recommended approval of the Peterson rezoning request.[7] A favorable finding and recommendation by

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[7] We note that the record also does not support the trial court's conclusion that "The Planning Commission initially recommended approving the application and then changed its mind after the public hearing on March 20, 1996." (R. 342.) In fact, it was merely the Planning Staff Report which recommended approval. The Commission recommended denial, but did not change its mind. This circumstance clearly does not evidence public clamor."

the planning commission need not be followed by the council. *See* 4 Anderson § 23.28 at 231 (". . . the recommendation of the planning board does not bind the legislative authority, and . . . such recommendation is advisory only."); 3 Rathkopf's § 30.03 at 30-11 ("Even though it is necessary for the legislative body to refer proposals to the planning commission and to receive the recommendations of that body, it is generally held that the recommendations of the commission need not be followed." (citing 19 cases from various jurisdictions)).

> There is no authority for the proposition that the council must defer to the commission's recommendation to approve a zone change. . . . The council has the responsibility to make the zoning decision based upon its own valid findings. It is not bound by the commission's findings even if they are supported by substantial evidence.

Heilman at 392 (emphasis added).

The Municipal Land Use Act does not require the council to follow the planning commission's recommendation. *E.g.,* Utah Code Ann. § 10-9-403 (requiring only submission to planning commission for recommendation). If it did, the council's deliberation and all of its public hearings on zoning matters would be meaningless. The planning commission has no statutory authority to zone property; only the City's legislative body has that authority. The appointed commission recommends; the elected council as the governing body legislates. In exercising its zoning authority, the council is not bound by the recommendations of the commission and does not act arbitrarily or capriciously in not following those recommendations. Whatever the original or subsequent recommendations

of the Planning Commission, its recommendations are not determinative as to whether the final legislative decision was arbitrary, capricious or illegal.

As with a determination of whether a use is compatible with adjoining properties, the decision of whether a requested zoning change is consistent with the general plan is an inherently subjective determination. While it is true that a different conclusion could also have been reached, as was done by the trial court, that does not make the original conclusion arbitrary or capricious. Where the conclusion is "reasonably debatable," Utah law requires the trial court to defer to and uphold the legislative judgment of the City Council. Its failure to do so here is erroneous as a matter of law.

CONCLUSION

The appropriate measure of the "arbitrary and capricious" standard as applied to a legislative decision on an application for rezoning requires broad judicial deference in recognition of the separation of powers doctrine. The measure of "substantial evidence" which applies to administrative decisions does not accommodate the requisite deference and invites the Court to substitute its judgment for that of local legislators. The Court should decline the invitation to reject years of well-settled, well-reasoned law to impose a new and more restrictive standard on legislative zoning decisions.

In this case, the exercise of legislative discretion by the City Council in denying the Bradley application for rezoning necessarily involves a subjective determination of what is in the best interest of the residents of the City based on an evaluation of the long-term goal and policy of the General Plan to promote industrial uses in this area and reflects the

fundamentally political nature of making public policy choices in enacting and modifying land use goals and ordinances, a quintessentially legislative process. Under these circumstances, consistent with existing law, the Court must defer to the legislative discretion of the City Council.

Applying the correct deferential standard to the record before the Court leads to the conclusion that the City did not act in an arbitrary or capricious manner in denying Bradleys' rezoning request The ruling of the trial court is therefore incorrect as a matter of law and should be reversed.

DATED this 13th day of October, 1999.

WILLIAMS & HUNT

By _____
Jody K Burnett
Attorneys for Defendants/Appellant
Payson City Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October, 1999, two (2) true and correct copies of the foregoing **Brief of Appellant Payson City** were mailed postage prepaid thereon, by first class mail in the United State mail, to the following:

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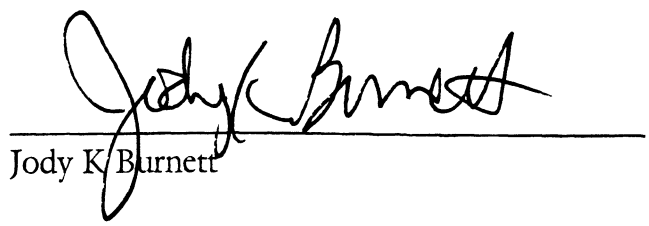

Jody K. Burnett

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ADDENDUM

A-1 Memorandum Decision filed January 22, 1999

A-2 Order filed March 16, 1999

ADDENDUM A-1

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

ROBERT BRADLEY, ET AL., Plaintiffs, vs. PAYSON CITY CORPORATION, Defendant.	**MEMORANDUM DECISION** CASE NO. 970400264 DATE: January 21, 1999 JUDGE: RAY M. HARDING DEPUTY CLERK: Georgia Snyder LAW CLERK: Dave Backman

This matter came before the Court upon Plaintiffs' and Defendant's cross Motions for Summary Judgment. Having received and considered the Motions, together with memoranda in support of and opposition to the Motions, the Court hereby grants Plaintiffs' Motion, denies Defendant's Motion, and delivers the following Memorandum Decision.

Statement of Facts

Plaintiffs applied to Payson City to change the zone of their property from R-1-A to R-2-75. Upon initial review of the application, the Planning Commission Staff issued an interoffice memo to the Mayor and the City Council members recommending approval of the zone change and for the Planning Commission and the City Council to hold a joint public hearing on the matter. On March 20, 1996, a joint public hearing was held and several landowners in the area expressed their opinions concerning the proposed change. After the public hearing, the Planning Commission voted to recommend denial of the zone change based on the opinions expressed at the public hearing. The City Council then voted to deny the change based on: (1) how it would be contrary to the General Plan; (2) traffic concerns relating to the industrial park; and (3) the Planning Commission's recommendation.

Opinion of the Court

Summary judgment is proper only if there is "no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." URCP 56(c). The Court must view the facts in the light most favorable to the non-moving party. Higgins v. Salt Lake County, 855 P.2d 231, 233 (Utah 1993).

The Court may reverse the City Council's denial of the zone change if the "action taken was so unreasonable as to be arbitrary and capricious." Xanthos v. Board of Adjustment, 685 P.2d 1032, 1034 (Utah 1984). "Even if the reasons given in the motion adopted by the council might otherwise be legally sufficient, . . . the denial of a permit is arbitrary when the reasons are without sufficient factual basis. . . . Citizen opposition is a consideration which must be weighed, but cannot be the sole basis for the decision to deny." Davis County v. Clearfield City, 756 P.2d 704, 711 (Utah Ct. App. 1988). The Court believes that the standard set forth in Davis County, although that case involved a denial of an application for a conditional use permit instead of a zone change, involves the same legal analysis as this case.

The Court finds that the City Council's decision to deny Plaintiffs' first application was arbitrary and capricious. The City Council stated that it based its decision on: (1) how the zone change would be contrary to the General Plan; (2) traffic concerns relating to the industrial park; and (3) the Planning Commission's recommendation. The stated reasons might normally be legally sufficient. However, they are without sufficient factual basis. The traffic concern was not a sufficient reason for the denial since there was no evidence before the City Council that the proposed zone change would in fact create traffic concerns. Also, there was no factual basis to rely on the Planning Commission's recommendation. The Planning Commission initially recommended approving the application and then changed its mind after the public hearing on March 20, 1996. The only reasons the Commission gave for its sudden reversal were the comments the neighbors made at the public hearing. Accordingly, the City Council's reliance on the Commission's recommendation was factually unfounded. Similarly, neither the Planning

Commission nor the City Council provided any factual basis for the reason that the zone change would be contrary to the General Plan. The Court notes that from the zoning maps provided to the Court it appears that there are already residentially zoned areas on the west side of the I-15 buffer. The mere fact that Plaintiffs' property is on the west side does not establish that it is contrary to the General Plan.

There being no sufficient factual basis for the decision to deny Plaintiffs' application, the Court finds that the decision was based solely on citizen opposition and was therefore arbitrary and capricious. Having reversed the denial of the application for a zone change from R-1-A to R-2-75, the Court need not analyze the denial of the second application.

Order

Accordingly, Plaintiffs' Motion for Summary Judgment is granted. The zone change from R-1-A to R-2-75 is hereby approved. Defendant's Motion for Summary Judgment is denied.

DATED this 22 day of January, 1999.

BY THE COURT:

RAY M. HARDING, JUDGE

cc: Mark E. Arnold, Attorney for Plaintiffs
Diana L. Garrett, Attorney for Plaintiffs
David C. Tuckett, Attorney for Payson City
David L. Church, Attorney for Payson City

ADDENDUM A-2

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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

ROBERT BRADLEY, JOYCE BRADLEY, R. DALE WHITELOCK, KARMA WHITELOCK, LOUIS PETERSON, AND BARBARA PETERSON,	)	Case No. 970400264
Plaintiffs,	)	
v.	)	
Payson City Corporation,	)	
Defendant.	)	Judge Ray M. Harding, Sr.

ORDER

On January 15, 1999, came on for hearing Plaintiffs' Motion for Summary Judgment and Defendant's Motion for Summary Judgment, at which Mark E. Arnold and Diana L. Garrett, of Arnold & Wiggins, P.C., appeared in behalf of the Plaintiffs and David C. Tuckett appeared in

behalf of Defendant, Payson City Corporation. Upon the conclusion of the hearing, the Court took the matter under advisement.

The Court, after having reviewed the Motions and supporting Memoranda and documents submitted by the parties, as well as the record, and after having fully considered the same, issued its Memorandum Decision on January 21, 1999.

The Court, pursuant to its Memorandum Decision, hereby ORDERS, ADJUDGES, and DECREES that Plaintiff's Motion for Summary Judgment is granted, so that Plaintiff's property is changed from R-1-A to R-2-75 zoning, and that Defendant's Motion for Summary Judgment is denied.

BY THE COURT

Ray M. Harding, Sr.
Fourth District Court Judge

Approved as to form:

David C. Tuckett
Attorney for Defendant Payson City Corporation